

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
NEIL BLUTIG and MANASH GJIELI,
Individually and in the right on
behalf of NRK 66, LLC,

Plaintiffs,

-against-

CHRISTOPHER KRASNIQI and NRK 66, LLC,

Defendants.
-----X

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

VERDICT

Index No: 032111/2015 E

HON. ROLF M. THORSEN, A.J.S.C.

Plaintiffs commenced the within action alleging causes of action for, inter alia, breach of fiduciary duty, breach of agreement, conversion, unjust enrichment, and judicial dissolution of the limited liability company, NRK 66, LLC, arising out of a failed business relationship with respect to the ownership and operation of Karma, a restaurant located in Nyack, New York. In their Answer, Defendants asserted twelve (12) counterclaims, many of which mirrored those alleged by Plaintiffs. A non-jury trial was held before this Court during which the individual parties testified. Upon consideration of the testimony presented and the documentary evidence, as well as the post-trial memorandum submitted,¹ the Court makes the following findings of relevant

¹ In their post-trial Memorandum of Law, Plaintiffs' contend that they have proven their causes of action for breach of fiduciary duty, conversion, unjust enrichment, rescission, ejectment, or alternatively judicial dissolution, and attorneys fees. As Plaintiffs have not offered any argument on the causes of action sounding in breach of contract, derivative action and accounting, these causes of action are deemed abandoned.

facts and conclusions of law:

FINDINGS OF RELEVANT FACTS

On or about April 16, 2014, defendant Christopher Krasniqi, (hereinafter "Krasniqi") formed NRK 66 LLC, a New York Limited Liability Company (hereinafter "NRK") and executed an Operating Agreement as the sole member. See, Plaintiff's Exhibit 1. NRK was formed for the purpose of owning and operating a restaurant/bar known as Karma at 100 Main Street, Nyack, New York. On May 14, 2014, Plaintiff, Neil Blutig (hereinafter "Blutig"), and Krasniqi, executed a First Amendment to Operating Agreement of NRK, which admitted Blutig as an equal member and 50% owner of NRK. See, Plaintiff's Exhibit 2. It is undisputed that Blutig contributed \$400,000.00 into NRK in exchange for his 50% interest with the understanding that Krasniqi would repay \$200,000 to Blutig from monies received upon the sale of Krasniqi's pizzeria in Montvale, New Jersey, as well as from monies due to Krasniqi out of NRK profits.

On or about July 23, 2014, NRK purchased the assets of Greenfinch, Inc., which formerly operated a restaurant/lounge business at the Nyack location. In connection therewith, NRK, by Krasniqi, executed an Amended Promissory Note dated August 18, 2014 whereby NRK was to pay Greenfinch, Inc., the sum of \$200,000 with 7% interest payable over a period of four (4) years. See, Plaintiff's Exhibit 8.

By Revised and Restated Operating Agreement dated August 14,

2014, Blutig and Krasniqi admitted Plaintiff Manash Gjieli (hereinafter "Gjieli") as an equal one-third (1/3) member/owner of NRK. It is undisputed that Gjieli made a capital contribution of \$200,000 towards NRK.

Shortly after opening the doors of Karma to the public in August, 2014, the parties began having problems. While Krasniqi had represented to Blutig and Gjieli that, at the time the operating agreements were executed, he had no judgments against him, Plaintiffs subsequently learned that Krasniqi did in fact have several money judgments entered against him, including a \$319,439 judgment in favor of George Governale. Plaintiffs further learned that Krasniqi's creditors were "going after" NRK to enforce their judgments. Blutig testified that if he had known about the judgments, he never would have gone into business with Krasniqi.

Moreover, despite Krasniqi's assurances that he would repay Blutig the \$200,000 that he owed him upon the sale of Krasniqi's pizzeria, Krasniqi never paid him. In addition, on an almost daily basis, members of Krasniqi's family would eat at Karma without paying for their meals. Krasniqi also engaged in inappropriate contact and verbal communication with Karma's employees and permitted his brother, who was employed at Karma, to engage in inappropriate behavior detrimental to NRK's business. Krasniqi would also vanish from Karma for hours when he was supposed to be tending bar and overseeing the restaurant. Lastly, a number of unexplained ATM withdrawals and purchases were made by Krasniqi on

the company's credit card and debit card.

In January 2015, as a result of the breakdown in the parties' relationship, Krasniqi left Karma and did not return. Under the management and financial investments of Plaintiffs, Karma has remained a viable business up until the time of the trial.

CONCLUSIONS OF LAW

Turning first to Plaintiffs' cause of action alleging breach of fiduciary duty (first cause of action), "[i]n order to establish a breach of fiduciary duty, a plaintiff must prove the existence of a fiduciary relationship, misconduct by the defendant, and damages that were directly caused by the defendant's misconduct." GMP Fur Trade Fin., LLC v. Brenner, 169 A.D.3d 649, 650 (2d Dept. 2019). The Court finds that Plaintiffs failed to prove their cause of action for breach of fiduciary duty.

With respect to Plaintiffs' cause of action for conversion (third cause of action), "[c]onversion is the unauthorized assumption and exercise of the right of ownership over goods belonging to another to the exclusion of the owner's rights." Hamlet at Willow Cr. Dev. Co. v. Northeast Land Dev. Corp., 64 A.D.3d 85, 113 (2d Dept. 2009). Thus, to establish conversion, Plaintiffs must demonstrate that Plaintiffs had a "legal ownership or an immediate superior right of possession to a specific identifiable thing and ... that defendant exercised an unauthorized dominion over the thing in question ... to the exclusion of the plaintiffs' rights." Id., quoting, Castaldi v. 39 Winfield Assoc.,

30 A.D.3d 458 (2d Dept. 2006) (Additional citations omitted). Applying these principles, the Court finds that Plaintiffs' proof was insufficient in that regard.

Next, Plaintiffs contend that the evidence at trial establishes their entitlement to judgment on their fourth cause of action for unjust enrichment. It is well-settled that "[t]he doctrine of unjust enrichment invokes an 'obligation imposed by equity to prevent injustice, *in the absence of an actual agreement between the parties concerned.*" Pappas v. Tzolis, 20 N.Y.3d 228, 234 (2012), quoting, IDT Corp. v. Morgan Stanley Dean Witter & Co., 12 N.Y.3d 132, 142 (2009) (Emphasis in the original). Here, because the parties' relationship is governed by the operating agreement, Plaintiffs cannot recover under the theory of unjust enrichment.

In their sixth cause of action seeking ejectment of Krasniqi from NRK 66, LLC, Plaintiffs offer no legal basis on which the relief sought can be granted. Nor is there any provision in the parties' Operating Agreement which permits the ejectment of a member.

Alternatively, however, Plaintiffs' seventh cause of action seeks judicial dissolution. The Court finds that Plaintiffs have demonstrated their entitlement to that relief. In that regard, based on the evidence presented at trial, the Court finds that upon dissolution, Plaintiff Blutig is entitled to be reimbursed in the amount of \$400,000.00 and Plaintiff Gjielli is entitled to be reimbursed in the amount of \$200,000.00. Any remaining equity in

NRK 66, LLC after dissolution shall be distributed evenly (33 1/3%) amongst Blutig, Gjielli and Krasniqi.

With respect to Plaintiffs' ninth cause of action for attorneys' fees, Plaintiffs have failed to demonstrate any provision in the parties' Operating Agreement that would entitle Plaintiffs' to an award of attorneys fees. Plaintiffs' reliance on cases involving shareholders' derivative suits is misplaced.

Furthermore, in their Post-Trial Memorandum of Law, Plaintiffs contend that the Operating Agreement should be rescinded. However, Plaintiffs failed to plead a cause of action for rescission and the Court will not therefore entertain such an argument at this juncture.

Lastly, the Court finds that Defendant failed to meet his quantum of proof as to any of the twelve counterclaims Defendant asserted in his answer.

Based on the foregoing, it is hereby

ORDERED that NRK 66, LLC is dissolved; and it is further

ORDERED that NRK 66, LLC shall proceed to wind up their affairs in accordance with the provisions of Limited Liability Company Law Section 703; and it is further

ORDERED that, pursuant to Limited Liability Company Law Section 702, the attorneys for the Plaintiffs shall, within fourteen (14) days of the date of this Order, transmit certified copies of this final order of dissolution to the department of state and to the clerk of Rockland County.

In conclusion, the Court renders its verdict as follows:

As to the First Cause of Action, judgment is in favor of Defendant.

As to the Second Cause of Action, judgment is in favor of Defendant.

As to the Third Cause of Action, judgment is in favor of Defendant.

As to the Fourth Cause of Action, judgment is in favor of Defendant.

As to the Fifth Cause of Action, judgment is in favor of Defendant.

As to the Sixth Cause of Action, judgment is in favor of Defendant.

As to the Seventh Cause of Action, judgment is in favor of the Plaintiffs as set forth herein.

As to the Eight Cause of Action, judgment is in favor of Defendant.

As to the Ninth Cause of Action, judgment is in favor of Defendant.

As to Defendants' twelve counterclaims, judgment is in favor of Plaintiffs.

The foregoing constitutes the Decision and Order of this Court.

Dated: May 24, 2019
New City, New York

ENTER

A handwritten signature in black ink, appearing to read 'R M Thorsen', is written over a horizontal line.

HON. ROLF M. THORSEN
Acting Supreme Court Justice

TO: NYSCEF